APPENDIX.

The opinion of the Court which follows is that delivered in No. 19, *Oklahoma Packing Co. et al.* v. *Oklahoma Gas & Electric Co.*, on December 4, 1939. On a petition for rehearing, this opinion was withdrawn and replaced (January 15, 1940, 308 U. S. 530) by the one reported *ante*, p. 4. For the separate opinion of Hughes, C. J., in which McReynolds and Roberts, JJ., concurred, see *ante*, p. 9.

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

The case concerns a rate controversy which has been winding its slow way through state and federal courts for thirteen years.[1] While the relationship of two utilities with Wilson & Co., a consumer of natural gas, complicates the situation, the legal issues before us may be disposed of as though this were a typical case of a utility resisting an order reducing its rates.[2] Oklahoma Gas &

[1] A history of the controversy is to be found in *Oklahoma Gas & Electric Co.* v. *Wilson & Co.*, 146 Okla. 272; 288 P. 316; *Oklahoma Gas & Electric Co.* v. *Wilson & Co.*, 54 F. 2d 596; *Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co.*, 6 F. Supp. 893; *Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co.*, 292 U. S. 386; *Oklahoma Gas & Electric Co.* v. *Wilson & Co.*, 178 Okla. 604; *Oklahoma Packing Co.* v. *Oklahoma Gas & Electric Co.*, 100 F. 2d 770.

[2] Oklahoma Natural Gas Co. and Oklahoma Gas and Electric Co., both engaged in the sale of natural gas in and about Oklahoma City, had agreed to a division of territory. Under that agreement, Wilson & Co. bought gas from Gas & Electric. The Oklahoma Corporation Commission found that Natural Gas had held itself out to provide gas to industrial consumers at a lower rate than that at which Wilson & Co. was able to buy from Gas & Electric. The Commission then ordered Natural Gas to provide Wilson & Co. with its gas at prevailing industrial rates. Both Natural Gas and Gas & Electric resisted the

Electric Company (hereafter called Gas & Electric) appealed to the Oklahoma Supreme Court from such an order by the Oklahoma Corporation Commission. The reduction was stayed pending the appeal, but to protect Wilson & Co. against a potential overcharge, Gas & Electric gave a supersedeas bond. Gas & Electric lost its appeal, *Oklahoma Gas & Electric Co.* v. *Wilson & Co.*, 146 Okla. 272; 288 P. 316, and Wilson & Co. brought suit on the bond. That suit was instituted in one of the district courts of Oklahoma. To enjoin prosecution of the latter suit Gas & Electric invoked the jurisdiction of the United States District Court for the Western District of Oklahoma.[3] This relief was granted and sustained by the Circuit Court of Appeals for the Tenth Circuit. *Oklahoma Packing Co.* v. *Oklahoma Gas & Electric Co.*, 100 F. 2d 770. Since the case in part was in conflict with the decision of the Circuit Court of Appeals for the Second Circuit in *Neirbo Co.* v. *Bethlehem Shipbuilding Corp.*, 103 F. 2d 765, and also presented novel aspects of important questions of federal law, we granted certiorari, 306 U. S. 629. We are not concerned with the merits of the Commission's order.

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order. Natural Gas contended that it had never held itself out to industrial consumers; Gas & Electric claimed that it was being unconstitutionally deprived of its right to sell to Wilson & Co. at the higher rate. If, pending appeal from the Commission, the order were not stayed, Wilson & Co. would have been able to purchase gas from Natural Gas at the lower rate and Gas & Electric would have been forced either to lower its rates to meet the competition or to lose the business.

[3] In 1928 Natural Gas complied with the order; and since that time Wilson & Co. has been buying gas at the lower rate prescribed by the Commission. The sole question now involved in these proceedings is the liability of Gas & Electric to Wilson & Co. for alleged overcharges between 1926 and 1928. The District Court found specifically that the Corporation Commission had made no threat to enforce penalties for violations of the 1926 order, and as to the Commission, declined to grant any injunctive relief. Cf. *Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co.*, 292 U. S. 386, 390.

At the threshold we are met by the procedural objection, seasonably made, that Wilson & Co., a Delaware corporation, was improperly sued in the District Court of the Western District of Oklahoma. The objection is unavailable. Prior to this suit, Wilson & Co. had, agreeable to the laws of Oklahoma, designated an agent for service of process "in any action in the State of Oklahoma." Both courts below found this to be in fact a consent on Wilson & Co.'s part to be sued in the courts of Oklahoma upon causes of action arising in that state. The Federal District Court is, we hold, a court of Oklahoma within the scope of that consent, and for the reasons indicated in *Neirbo Co.* v. *Bethlehem Shipbuilding Corp.*, 308 U. S. 165, Wilson & Co. was amenable to suit in the Western District of Oklahoma.

Petitioners further urge (1) that their plea of *res judicata* should have been sustained and (2) that § 265 of the Judicial Code (Act of March 3, 1911, 36 Stat. 1162, 28 U. S. C. § 379, derived from the Act of March 2, 1793, 1 Stat. 334), was a bar to the suit.

The claim of *res judicata* is based on the prior determination in 1930 by the Supreme Court of Oklahoma that the contested order of the Corporation Commission was valid. *Oklahoma Gas & Elec. Co.* v. *Wilson & Co.*, 146 Okla. 272; 288 P. 316. The theory of the present bill, filed in 1932, was that the review which the Oklahoma Supreme Court afforded the respondents in 1930 was "legislative" rather than "judicial" in character, and therefore left open the judicial review sought below. After the bill was filed but before the injunction now challenged was decreed, the Oklahoma Supreme Court held that its decision in a case like that of *Oklahoma Gas & Elec. Co.* v. *Wilson & Co., supra,* was a judicial judgment. *Oklahoma Cotton Ginners' Assn.* v. *State,* 174 Okla. 243; 51 P. 2d 327.

In view of the authoritative construction thus placed by the highest court of Oklahoma on what it had done

in 1930, the respondents had in fact been accorded by the Oklahoma Supreme Court judicial review of precisely the same legal issues which it sought to re-litigate in this suit.[4] And by its decree in this suit the District Court made an adjudication in direct conflict with that made by the Oklahoma Court seven years earlier.

This, it is suggested, is to confound the fog, in which the scope of review of the Oklahoma Supreme Court was shrouded in 1930, with the clarity of adjudication made explicit by the *Ginners'* case in 1935. But for centuries our law has been operating on such notions of relation and in situations far more drastic and trying to individual litigants than this case presents. See *Great Northern Ry. Co.* v. *Sunburst Oil & Refining Co.*, 287 U. S. 358; Holmes, J., dissenting in *Kuhn* v. *Fairmont Coal Co.*, 215 U. S. 349, 370. It is part of the price paid for the overriding benefits of a system of justice based on more or less general principles as against *ad hoc* determinations. For, in holding that its review of the order of the Corporation Commission was a judicial determination and therefore an adjudication of the issues sought to be re-litigated here, the Oklahoma Supreme Court did not profess to make new law or to change the old. Even if it had, and had retrospectively given judicial significance to its action in 146 Okla. 272; 288 P. 316, *res judicata* would still come into play and the only basis for relief could be an appeal to *stare decisis*. But the discouraging history of such a juristic sport as was the doctrine of *Gelpcke* v. *Dubuque*, 1 Wall. 175, admonishes us to adhere to a state court's declaration of its own law even though it has had a checkered unfolding. See Mr. Justice Holmes, dissenting, in *Muhlker* v. *New York & Harlem R. Co.*, 197 U. S. 544, 574. But here we are not presented with the recondite difficulties of a situation comparable to *Gelpcke*

[4] From this judicial determination by the Oklahoma Supreme Court, no review was sought here.

v. *Dubuque*. The state court, as we have already indicated, did not go back on its past; it merely clarified what it had previously done.

The present case, therefore, presents a situation very different from that dealt with in *Corporation Commission* v. *Cary*, 296 U. S. 452. That case merely decided that the grant of an interlocutory injunction to stay enforcement of a Commission order was not "an improvident exercise of judicial discretion" when at the time the decree issued the Oklahoma decisions left doubts whether or not the state law afforded judicial review, as required by the Johnson Act. (Act of May 14, 1934, 48 Stat. 775.)

Whether a state court decision serves to foreclose future litigation in the federal courts of course depends on the applicability of the state law of *res judicata* to the particular decision. *Union & Planters' Bank* v. *Memphis*, 189 U. S. 71; *Covington* v. *First National Bank*, 198 U. S. 100; *Wright* v. *Georgia Railroad & Banking Co.*, 216 U. S. 420. In the absence of any peculiar local doctrine the generally accepted principles of *res judicata* will be assumed to govern. Nor will a particular decision be deemed excepted from the scope of *res judicata* unless the state court has explicitly so indicated. We have not learned of any Oklahoma departure from the general notions of *res judicata*. Nor has the Oklahoma Supreme Court, with full opportunity for reviewing the course of litigation arising out of the particular order, indicated that its decision of 1930 (146 Okla. 272; 288 P. 316), recognized by it as a judicial adjudication, is not to have one of the most important incidents of a judicial adjudication—finality for purposes of re-litigation.

The reliance which is placed upon *Oklahoma Gas & Electric Co.* v. *Wilson & Co.*, 178 Okla. 604; 63 P. 2d 703, carries no such significance. To be sure, in that case the Oklahoma Supreme Court reversed a lower court judgment in favor of Wilson & Co. in the action which later was stayed by the District Court in the present

proceedings. The Oklahoma Supreme Court did not hold that its determination in the earlier proceeding was not a final adjudication, but merely sought to define and accept the jurisdiction of the federal court in view of the uncertainty as to state law at the time federal jurisdiction was invoked.[5] We interpret this action of the Oklahoma Supreme Court as a generous application of the doctrine of comity between state and federal courts. But in staying action in the state court to await disposition of the controversy in the federal court, the Oklahoma Supreme Court merely gave the federal court right of way to settle all relevant issues appropriately raised in the federal action. One of these issues was whether or not the 1930 decision of the Oklahoma Supreme Court had foreclosed further litigation in the federal court. That depended on whether or not the 1930 decision was a judicial adjudication. The holding in the *Ginners'* case was that it was. In its 1936 decision (178 Okla. 604; 63 P. 2d 703) the Oklahoma Supreme Court did not say, though it could have said, that its review of this very order was not judicial. On the contrary, it said that it was judicial. The situation would, of course, be wholly different had the Supreme Court of Oklahoma deemed its review in 146 Okla. 272; 288 P. 316 to have been legislative in character and as such incapable of generating *res judicata*. *Prentis* v. *Atlantic Coast Line Co.*, 211

[5] "In the instant case, in view of the fact that defendants' right to a judicial remedy in the state courts was uncertain, the federal court acquired jurisdiction of the cause instituted therein by defendants. That remedy was available to them as the only certain method of obtaining a judicial determination of the validity of the Commission's order. The suit was a direct attack upon such order, and until its validity was established in that suit, the state court was without jurisdiction to proceed with an action based upon such order. This for the reason that where direct attack in equity is made upon the order of the Commission, the defendants' liability on such order is not finally determined judicially until final determination of the equitable action." 178 Okla. 604, 606; 63 P. 2d 703, 704.

U. S. 210, 227. We must therefore attach to its earlier judicial determination that characteristic finality which is the essence of *res judicata.*

But even if the validity of the order passed upon in 1930 (146 Okla. 272; 288 P. 316) could have been re-litigated under Oklahoma law, it should have been allowed to be so litigated in the Oklahoma courts. Whatever else the Oklahoma Supreme Court may have given to a federal district court by a show of comity, it could not have given it authority denied by Congress. The District Court exercised its jurisdiction to "stay proceedings" previously begun in the state court. Inasmuch as the scope of the present suit is precisely the same as that of the action in the state court which this suit sought to restrain, § 265 of the Judicial Code[6] operates as a bar upon the district court's power. The injunction below is within the plain interdiction of an act of Congress, and not taken out of it by any of the exceptions which this Court has heretofore engrafted upon that act. Compare *Madisonville Traction Co.* v. *St. Bernard Mining Co.,* 196 U. S. 239; *Simon* v. *Southern Ry. Co.,* 236 U. S. 115; *Wells, Fargo & Co.* v. *Taylor,* 254 U. S. 175. See Warren, "Federal and State Court Interference," 43 Harv. L. Rev. 354, 372–77. That the injunction which issued below was a restraint of the parties and not a formal restrain upon the state court itself, is immaterial. *Hill* v. *Martin,* 296 U. S. 393, 403. Cf. *Kohn* v. *Central Distributing Co.,* 306 U. S. 531.

The judgment below is reversed, with directions to dismiss the bill.

Reversed.

[6] Sec. 265 provides: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."